

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,

Plaintiff,

v.

BORQUEZ, *et al.*,

Defendants.

Case No. 1:23-cv-00046-ADA-BAM (PC)

ORDER TO SHOW CAUSE WHY
DEFENDANTS BORQUEZ AND QUEREDO
SHOULD NOT BE DISMISSED FROM THIS
ACTION FOR FAILURE TO PROVIDE
SUFFICIENT INFORMATION TO
EFFECTUATE SERVICE

(ECF No. 14)

THIRTY (30) DAY DEADLINE

Plaintiff Devonte B. Harris (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Borquez and Queredo for deliberate fabrication of evidence in violation of the Fourteenth Amendment.

On March 28, 2023, the Court issued an order directing service on Defendants under the Court’s E-Service pilot program for civil rights cases for the Eastern District of California. (ECF No. 14.) The order included the following information regarding Defendant Borquez: “S. M. Borquez, Certified Nurse Assistant; California State Prison – Corcoran, Facility 4A1L, Cell 8; on or about April 7, 2018, approximately 7:30 a.m.” and the following information regarding Defendant Queredo: “P. Queredo, Certified Nurse Assistant; California State Prison – Corcoran, Facility 4A1L, Cell 8; on or about April 7, 2018, approximately 7:30 a.m.” (*Id.* at 2.) On May 30, 2023, the Court received information that Defendants Borquez and Queredo could not be

1 identified.

2 Federal Rule of Civil Procedure 4(m) provides as follows:

3 If a defendant is not served within 120 days after the complaint is filed, the
4 court—on motion or on its own after notice to the plaintiff—must dismiss the
5 action without prejudice against that defendant or order that service be made
6 within a specified time. But if the plaintiff shows good cause for the failure, the
7 court must extend the time for service for an appropriate period.

8 Fed. R. Civ. P. 4(m).

9 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
10 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
11 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
12 summons and complaint, and . . . should not be penalized by having his or her action dismissed
13 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
14 duties required of each of them” *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990). “So
15 long as the prisoner has furnished the information necessary to identify the defendant, the
16 marshal’s failure to effect service is ‘automatically good cause’” *Walker v. Sumner*, 14 F.3d
17 1415, 1422 (9th Cir. 1994), abrogated on other grounds by *Sandin v. Connor*, 515 U.S. 472, 115
18 (1995). However, where a *pro se* plaintiff fails to provide the Marshal with accurate and
19 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*
20 dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at 1421–22.

21 Here, the U.S. Marshal attempted to electronically serve Defendants Borquez and
22 Queredo with the information that Plaintiff provided. However, the Marshal was informed that
23 there was not enough information to identify Defendants Borquez and Queredo for service of
24 process. If Plaintiff is unable to provide the Marshal with the necessary information to identify
25 and locate these defendants, Defendants Borquez and Queredo shall be dismissed from this
26 action, without prejudice.

27 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause
28 why Defendants Borquez and Queredo should not be dismissed from the action at this time.
Plaintiff may respond to this order by providing additional information that will assist the

1 Marshal in identifying Defendants Borquez and Queredo for service of process.

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show cause
4 why Defendants Borquez and Queredo should not be dismissed from this action; and
5 2. **The failure to respond to this order or the failure to show cause will result in the**
6 **dismissal of any unidentified defendant from this action, or dismissal of the entire**
7 **action, due to Plaintiff's failure to serve process pursuant to Federal Rule of Civil**
8 **Procedure 4(m).**

9
10 IT IS SO ORDERED.

11 Dated: June 1, 2023

12 /s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28